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Attorneys for Plaintiffs and Counterclaim  
Defendants ILLUMINA, INC. and VERINATA  
HEALTH, INC.

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

VERINATA HEALTH, INC.,  
and

THE BOARD OF TRUSTEES OF THE  
LELAND STANFORD JUNIOR  
UNIVERSITY

Plaintiffs and  
Counterclaim-Defendants,

v.

ARIOSA DIAGNOSTICS, INC.,  
and

LABORATORY CORPORATION OF  
AMERICA HOLDINGS,

Defendants and  
Counterclaim-Plaintiffs.

ILLUMINA, INC.,

Plaintiff,

v.

ARIOSA DIAGNOSTICS, INC.,  
Defendant.

Case No. 3:12-cv-05501-SI (consolidated  
with Case No. 3:14-cv-01921-SI and Case  
No. 3:15-cv-02216-SI)

**ILLUMINA, INC.'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
PORTIONS OF PLAINTIFFS AND  
COUNTERCLAIM DEFENDANTS  
ILLUMINA, INC. AND VERINATA  
HEALTH, INC.'S MOTION FOR  
SUMMARY JUDGMENT AND  
EXHIBITS 1, 3-4, 10, 12-16, 19, 23-24, 26-  
33 THERETO**

Judge: Hon. Susan Illston

1 ILLUMINA, INC.,

2 Plaintiff,

3 v.

4 ARIOSIA DIAGNOSTICS, INC., AND  
5 ROCHE MOLECULAR SYSTEMS, INC.,

6 Defendants.  
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1 Plaintiff Illumina, Inc. (“Illumina”) submits this administrative motion for a sealing order  
2 pursuant to Civil Local Rule 79-5. Illumina respectfully requests that the Court permit portions  
3 of Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.’s Motion for  
4 Summary Judgment and Exhibits 1, 3-4, 10, 12-16, 19, 23-24, 26-33 thereto to be filed under  
5 seal. This motion is based on the points and authorities herein, and on the accompanying  
6 Declaration of Derek Walter in Support of Illumina’s Administrative Motion to File Under Seal.

7 Portions of Illumina, Inc.’s Notice of Motion and Motion for Summary Judgment refer to  
8 and quote material that is designated as Highly Confidential – Outside Attorneys’ Eyes Only  
9 pursuant to the protective order in Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No.  
10 41. The specific material that has been designated as such is described below. Where this  
11 information constitutes Illumina’s confidential information, Illumina has shown why this material  
12 should remain sealed. On the other hand, where the information constitutes Ariosa’s confidential  
13 information, Illumina understands that Ariosa will submit a declaration establishing that the  
14 material should remain sealed. Accordingly, Illumina respectfully requests that the Court permit  
15 the redacted portions of Illumina, Inc.’s Notice of Motion and Motion for Summary Judgment to  
16 be filed under seal. *See* Walter Decl. ¶ 2.

17 Exhibit 1 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
18 Inc.’s Motion for Summary Judgment is a true and correct copy of excerpted pages from Arnold  
19 Oliphant’s Deposition Transcript, taken on January 22, 2015. Ariosa Diagnostics, Inc., (“Ariosa”)  
20 has previously designated portions of Exhibit 1 as “Highly Confidential – Outside Attorneys’  
21 Eyes Only” pursuant to the protective order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921,  
22 Dkt. No. 41. Ariosa has previously provided a redacted copy of this transcript. Ariosa has  
23 previously agreed that the unredacted portions can be seen publicly, but has maintained that the  
24 redacted portions should remain sealed. Accordingly, Illumina respectfully requests that the  
25 Court permit Exhibit 1 to be filed under seal. *See id.* ¶ 3.

26 Exhibit 3 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
27 Inc.’s Motion for Summary Judgment is a true and correct copy of excerpted pages from John  
28 Stuelpnagel’s Deposition Transcript, taken on February 24, 2017. Ariosa has designated Exhibit 3

1 as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the protective order Case No. 12-  
2 05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the  
3 transcript as such, Illumina respectfully requests that the Court permit Exhibit 3 to be filed under  
4 seal. *See id.* ¶ 4.

5 Exhibit 4 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
6 Inc.’s Motion for Summary Judgment is a true and correct copy of excerpted pages for Ariosa  
7 Diagnostics, Inc.’s Objections and Responses to Plaintiffs’ Fifth Set of Interrogatories to Ariosa  
8 Diagnostics, Inc., Case No. 3:12-cv-05501-SI, served on September 24, 2014. Ariosa has  
9 designated Exhibit 4 as “Highly Confidential – Outside Attorneys’ Eyes Only” pursuant to the  
10 protective order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because  
11 Ariosa has designated the discovery response as such, Illumina respectfully requests that the  
12 Court permit Exhibit 4 to be filed under seal. *See id.* ¶ 5.

13 Exhibit 10 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
14 Inc.’s Motion for Summary Judgment is a true and correct copy of excerpted pages of Dr. Charles  
15 R. Cantor’s Opening Expert Report, dated June 2, 2017. Ariosa has previously designated  
16 portions of Exhibit 10 as “Highly Confidential – Outside Attorneys’ Eyes Only” pursuant to the  
17 protective order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Ariosa has  
18 previously provided a redacted copy of this expert report. Ariosa has previously agreed that the  
19 unredacted portions can be seen publicly, but has maintained that the redacted portions should  
20 remain sealed. Accordingly, Illumina respectfully requests that the Court permit Exhibit 10 to be  
21 filed under seal. *See id.* ¶ 6.

22 Exhibit 12 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
23 Inc.’s Motion for Summary Judgment is a true and correct copy of excerpted pages of Dr.  
24 Gregory Cooper’s Expert Report, dated June 2, 2017. Ariosa has designated Exhibit 12 as  
25 “Highly Confidential – Outside Attorneys’ Eyes Only” pursuant to the protective order Case No.  
26 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the  
27 report as such, Illumina respectfully requests that the Court permit Exhibit 12 to be filed under  
28 seal. *See id.* ¶ 7.

1 Exhibit 13 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
2 Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages from Dr.  
3 Gregory Cooper's Deposition Transcript, taken on July 26, 2017. Ariosa has designated Exhibit  
4 13 as "Highly Confidential – Attorneys' Eyes Only" pursuant to the protective order Case No.  
5 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the  
6 transcript as such, Illumina respectfully requests that the Court permit Exhibit 13 to be filed under  
7 seal. *See id.* ¶ 8.

8 Exhibit 14 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
9 Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages from John  
10 Quackenbush's Deposition Transcript, taken on August 15, 2017. Ariosa has designated Exhibit  
11 14 as "Highly Confidential – Attorneys' Eyes Only" pursuant to the protective order Case No.  
12 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the  
13 transcript as such, Illumina respectfully requests that the Court permit Exhibit 14 to be filed under  
14 seal. *See id.* ¶ 9.

15 Exhibit 15 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
16 Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages of John  
17 Quackenbush's Rebuttal Expert Report, dated July 7, 2017. Ariosa has designated Exhibit 15 as  
18 "Highly Confidential – Outside Attorneys' Eyes Only" pursuant to the protective order Case No.  
19 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the  
20 report as such, Illumina respectfully requests that the Court permit Exhibit 15 to be filed under  
21 seal. *See id.* ¶ 10.

22 Exhibit 16 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
23 Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages from Charles  
24 R. Cantor's Deposition Transcript, taken on July 24, 2017. Ariosa has designated Exhibit 16 as  
25 "Highly Confidential – Attorneys' Eyes Only" pursuant to the protective order Case No. 12-  
26 05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the  
27 transcript as such, Illumina respectfully requests that the Court permit Exhibit 16 to be filed under  
28 seal. *See id.* ¶ 11.

Exhibit 19 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages of Nicholas Godici's Expert Report, dated June 2, 2017. Ariosa has previously designated portions of Exhibit 19 as "Highly Confidential – Outside Attorneys' Eyes Only" pursuant to the protective order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Ariosa has previously provided a redacted copy of this expert report. Ariosa has previously agreed that the unredacted portions can be seen publicly. Accordingly, Illumina respectfully requests that the Court permit Exhibit 19 to be filed under seal. *See id.* ¶ 12.

Exhibit 23 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.'s Motion for Summary Judgment is a true and correct copy of Ariosa Diagnostics, Inc.'s Third Amended Answer and Counterclaims, Case No. 3:15-cv-02216, filed on November 11, 2016. Both Ariosa and Illumina agree that the Supply Agreement contains highly sensitive, confidential terms of Illumina's relationship with Ariosa. The Agreement is marked "Confidential" and contains a confidentiality provision. Disclosure of these terms to competitors and potential customers would reveal information that is not publicly known regarding Illumina's business strategy and practices, and this presents a risk of substantial harm to Illumina. This Court has previously determined that this information is sealable. *See* Dkt. 32, 63 in Case No. 14-01921. Accordingly, Illumina respectfully requests that the Court permit Exhibit 23 to be filed under seal. *See id.* ¶ 13.

Exhibit 24 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages of Ariosa Diagnostics Inc.'s First Supplemental Response to Interrogatory No. 38, Case No. 3:14-cv-05501, served on March 27, 2017. Ariosa has designated Exhibit 24 as "Highly Confidential – Outside Attorneys' Eyes Only" pursuant to the protective order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the discovery response as such, Illumina respectfully requests that the Court permit Exhibit 24 to be filed under seal. *See id.* ¶ 14.

Exhibit 26 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.'s Motion for Summary Judgment is a true and correct copy of a signed Sale and Supply Agreement between Illumina and Aria Diagnostics, Inc. dated January 4, 2012, ILMNA00223216-ILMNA00223239. Exhibit 26 contains confidential information regarding Illumina, Inc.'s business, operations, transactions, corporate, and legal strategy that is not otherwise publicly known. For example, information included in this agreement, such as transactional and confidential internal plans and projects, is not otherwise public information. There is no basis for the public dissemination of this information. Both Ariosa and Illumina agree that the Supply Agreement contains highly sensitive, confidential terms of Illumina's relationship with Ariosa. The Agreement is marked "Confidential" and contains a confidentiality provision. Disclosure of these terms to competitors and potential customers would reveal information that is not publicly known regarding Illumina's business strategy and practices, and this presents a risk of substantial harm to Illumina. Illumina, Inc. designated this as "Outside Attorneys' Eyes Only Information" under the Stipulated Protective Order governing these proceedings. Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. This Court has previously determined that this information is sealable. *See* Dkt. Nos. 32, 63 in Case No. 14-01921. Accordingly, Illumina respectfully requests that the Court permit Exhibit 26 to be filed under seal. *See id.* ¶ 15.

Exhibit 27 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages of Dave Mullarkey's Deposition Transcript, taken on January 9, 2015. Ariosa has designated Exhibit 27 as "Highly Confidential – Outside Attorneys' Eyes Only" pursuant to the protective order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the transcript as such, Illumina respectfully requests that the Court permit Exhibit 27 to be filed under seal. *See id.* ¶ 16.

Exhibit 28 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages of Joe Gilliam's Deposition Transcript, taken on March 27, 2017. Ariosa has designated Exhibit 28 as "Highly Confidential" pursuant to the protective order Case No. 12-05501, Dkt. No. 52; Case

1 No. 14-01921, Dkt. No. 41. Because Ariosa has designated the transcript as such, Illumina  
2 respectfully requests that the Court permit Exhibit 28 to be filed under seal. *See id.* ¶ 17.

3 Exhibit 29 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
4 Inc.'s Motion for Summary Judgment is a true and correct copy of an email from Ken Song,  
5 dated April 25, 2017, JPM\_ARIOSA\_00056. Ariosa has designated Exhibit 29 as "Highly  
6 Confidential – Outside Attorneys' Eyes Only" pursuant to the protective order Case No. 12-  
7 05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated this  
8 production document as such, Illumina respectfully requests that the Court permit Exhibit 29 to  
9 be filed under seal. *See id.* ¶ 18.

10 Exhibit 30 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
11 Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages from Ariosa  
12 Diagnostics Inc.'s Objections and Response to Plaintiffs' Seventh Set of Interrogatories, Case  
13 No. 3:12-cv-05501-SI, served on December 15, 2014. Ariosa has designated Exhibit 30 as  
14 "Highly Confidential – Outside Attorneys' Eyes Only" pursuant to the protective order Case No.  
15 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has designated the  
16 discovery response as such, Illumina respectfully requests that the Court permit Exhibit 30 to be  
17 filed under seal. *See id.* ¶ 19.

18 Exhibit 31 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
19 Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages from Ariosa  
20 Diagnostics Inc.'s Objections and Responses to Plaintiffs' Second Set of Request for Admission  
21 to Ariosa Diagnostics, Inc. (Nos. 29-34) served on December 9, 2016. Ariosa has designated  
22 Exhibit 31 as "Highly Confidential – Outside Attorneys' Eyes Only" pursuant to the protective  
23 order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has  
24 designated the discovery response as such, Illumina respectfully requests that the Court permit  
25 Exhibit 31 to be filed under seal. *See id.* ¶ 20.

26 Exhibit 32 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
27 Inc.'s Motion for Summary Judgment is a true and correct copy of excerpted pages from the  
28 Deposition Transcript of Ken Song, taken on January 19, 2017. Ariosa has designated Exhibit 32



1 as “Confidential Business Information – Attorneys’ Eyes Only” pursuant to the protective order  
 2 Case No. 12-05501, Dkt. No. 52; Case No. 14-01921, Dkt. No. 41. Because Ariosa has  
 3 designated the transcript as such, Illumina respectfully requests that the Court permit Exhibit 32  
 4 to be filed under seal. *See id.* ¶ 21.

5 Exhibit 33 to Plaintiffs and Counterclaim Defendants Illumina, Inc. and Verinata Health,  
 6 Inc.’s Motion for Summary Judgment is a true and correct copy of a presentation by J.P. Morgan  
 7 for Citi entitled “Project Rapid–IPO Valuation,” dated April 2-14, AD-VER-01177357-AD-  
 8 VER-01177367. Ariosa has designated Exhibit 33 as Highly Confidential – Outside Attorneys’  
 9 Eyes Only pursuant to the protective order Case No. 12-05501, Dkt. No. 52; Case No. 14-01921,  
 10 Dkt. No. 41. Because Ariosa has designated the presentation as such, Illumina respectfully  
 11 requests that the Court permit Exhibit 33 to be filed under seal. *See id.* ¶ 22.

12 Accordingly, Illumina respectfully requests that the Court permit portions of Plaintiffs And  
 13 Counterclaim Defendants Illumina, Inc. and Verinata Health, Inc.’s Motion for Summary  
 14 Judgment along with certain exhibits thereto to be filed under seal.

15  
 16 Respectfully submitted,

17 Dated: September 1, 2017

WEIL, GOTSHAL & MANGES LLP

18  
 19 By: /s/ Derek C. Walter  
 20 Derek C. Walter

21 Attorneys for Plaintiffs and Counterclaim  
 22 Defendants  
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